1890-005 Chancery Causes: Nathan H. Moore vs. Peter P. Fugate &c
Lee Co.

Overton, Combs, Flanary

CA- Estate Dispute
T- Property

Will: 1887: M. B. Overton: Tennessee

To the Hon. H. L. K. Morison
Judge of the Circuit Court of
Lee County Virginia

Your Orator
Nathan H. Moore, would re-
spectfully represent, that heretofore
one M. B. Overton, made and pub-
lished his last will and testament
in Hancock County Tenn. of which
State he was a citizen, by which he
willed and devised unto Martha J.
Combs five hundred dollars
out of the G. B. Short debt, when
collected &c &c. "And if the above
Martha J. Combs should die leaving
no heirs of her body, the said
amount to be divided &c &c.

Your orator intermarried with the
said Martha J. Combs, and they
had as the issue of said marriage
one child Martha Moore, which
child was living at the death
of the said Martha J. Moore form-
erly Combs, and survived her
about 3 month when it died
leaving Your Orator its sole
heir at law. By reason of
which Your Orator is advised
that said Legacy is now due

and properly payable to your orator, as heir of the surviving child of the said Martha L. Coles

By the terms of said will one Peter P. Fugate was appointed and qualified as the executor of said Hill and still remains the said executor thereof.

Said Fugate, as well as your orator is now and was at the time residents of this County where the said Short debt out of which said legacy was to come was owing. The said Short debt was all collected by said executor and now remains undisbursed in his hands and amounts to five hundred dollars or more - but the exact date at which it was collected he cannot tell, but calls on the said Fugate to answer. From which date he is advised and therefore charges said legacy bears interest.

Your orator believes said Fugate feels willing to pay the same but awaits the order of a Court of Competent Jurisdiction to indemnify

Summons & complaint of the Lib

fully therein his action.

A Copy of the said will, will be found filed herewith as part hereof.

The object of this bill therefore is to enforce said trust and compel the said Fugate to pay said Legacy, the same never having been paid, and its interest, to your Orator, in accordance with said Will - And your Orator prays that Peter P. Fugate be made a Party hereto

And for all other further and general relief May seem meet.

A. L. Prideaux
for Plff.

2 J P

Nathan H. Moore

vs

Bill Chy.

Peter P. Sugate admr

1887 July Bill filed & Sp
Executed & Decree Nisi
" Aug. Ans P. P. Sugate filed
& Cause set for hearing
" Stipulation
" Stipulation
April continued
" Deft order, by consent
for vacation Decree
" Decr continued
1889 July 12 Decree
Decree entered 12

1890 Decree final
Deft by Court of Appeals
O.B. 339

Costs

Clk 10.58
S 5.0
Ct 15.00
$26.08

Deft Recovers

C 16.11
C. Tem 1.30
A 15.00
$32.41

Appeals

Stanton .65
Wythe 68.70
$69.35

To the Hon. H. S. K. Morison Judge of the Circuit Court of Lee County Va.

The amended and supplemental bill of Nathan H. Moore who humble complaining would respectfully represent, That at the July rules 1887, of this Hon. Court he filed his original bill, against one Peter P. Frugate, then and now the executor in Hancock County Tenn. of one M. B. Overton deceased. By which he sought to enforce the payment of a Legacy, which your orator is advised was then and is now due your orator. Not waiving any of the matters and things contained in said bill but reiterating, and relying on the same, begs leave to refer to said bill, and the matters therein stated, and by way of amendment and reitration to state that said M. B. Overton, a citizen of Hancock County on the 17th day of Nov. 1878, made and published in due form of law his said last will and testament, and the same was duly recorded in said state a copy of which

marke "A" will be found, filed with your orators said original bill; and as therein stated among other things, the said Overton created a demonstrative Legacy in the following words; "I give and bequeath to Martha J. Combs, the daughter of Virginia A. Combs, deceased five hundred dollars out of the G. B. Short debt when collected and put at interest including the amount due her in my hands from the estate of Virginia A. Combs deceased; and if the above Martha J. Combs should ~~should~~ die leaving no heirs of her body the said amount to be divided equally between my heirs". &c&c.

Thus it will be seen said Legacy was also contingent, upon the death without heirs of said Martha J. Combs.

Your orator here alleges that he intermarried with the said Martha J. Combs, who had born alive one heir a female child, Martha Moore and his said wife then departed this life intestate, leaving said infant surviving her the said Martha J. Combs afterwards Moore, about

three months - This infant was the offspring of said Marriage, and was the legal heir of the said Martha J. Moore nee Martha J. Combs. The said Martha Moore was also the lawful child of your orator who was its father, and upon the death of said infant, your orator is advised he is its lawful heir, it having died in infancy, consequently childless and intestate.
By reason of which said legacy vested first in the said Martha J. Combs and by reason of the marriage passed to your orator as husband, being capable of reduction to possession - But if not the child Martha, being alive at the death of the legatee Martha J. the legacy became vested in the said living heir, and was so fixed for a period of more than three months - when it died and the same passed in course of descent to your orator and became and is vested in and now is due to your orator. Your orator and the said Fugate are both residents of this County and State, and the

has fully collected the G. B. Short debt out of which said legacy was to be paid - said debt was known to the said Overton to be perfectly solvent being a lien upon valuable real estate. this real estate was in the enforcement of said lien ~~sold~~ for the payment of said debt and the said Peter P. Fugate became the purchaser, and thus has now in his own hands the proceeds of the short debt, and owes this very legacy himself to said estate, which is clearly shown by his answer to the original bill

The object of this bill is therefore to compel him to pay this legacy to your orator, he owing individually the money collected as executor by reason of his purchase

The estate of Martha L. Moore and the infant Martha Moore have each been administered upon by Samuel H. Ewing Sheriff of this County but there are no effects in his hands, nor is he as your orator is advised entitled to

have and receive this legacy there being no debt to be paid except funeral expenses all of which as been paid by your Orator, but while he seeks no relief from him he is advised it proper that he should be be before the Court.
But if he is mistaken as to this legacy being due him, and the same should be regarded as property due the said Ewing as admr, then the object is to have the same paid to him, and by him paid over to your orator left custy of administration
The premises considered therefore your orator prays that Peter P. Fugate mi his own right and if deemed necessary as executor of M. B. Overton's estate, and ~~Same~~ J. R. D. Flanary ~~Ewing~~ administrator of the estate of Martha J. Moore nee Martha J. Lewis, and as administrator of the estate of the infant Martha Moore, be made parties defendants to this Amended bill that they be required to answer the same, and on a hearing

a decree be rendered directing the payment of said Legacy to your orator. And for all other further and General relief may seem supervisions.

A. L. Pridemore
Pr. q.

Nathan H. McCoy
vs
Amanda Pridemore et al

Filed Sept 6 1884.
J. A. S. Pr

7

To The Honorable H. S. K. Morison
Judge of The Circuit Court of Lee County Va.

The answer of Peter. P Fugate
Executor of M B. Overton deceased
to a bill exhibited against him in
This Honorable Court by Nathan H Moore

Respondent saving The benefit
of all such exceptions as can or may
be had to said bill upon its final hear
ing for answer thereto, or to so much
Thereof as he is advised it is material
or necessary for him to answer, an
swering says. That it is true That
M B. Overton in his life time made
and published his last will and
Testament. That said Overton at
The time of making and executing
said Will, and at The date of his
death was a citizen of Hancock
County in The State of Tennessee
That after The death of said Testa
Tor said will was duly proved and
recorded in The County Court
of said County of Hancock in
The State of Tennessee.

It is also true That This respond
ent was appointed by said Testa
Tor Executor of said last will and
testament. That he accepted said

Trust and was duly qualified as Executor in the County Court of said County of Hancock.

It is also true that respondent and complainant are now and were at the date of said will and at the date of the Testators death residents of Lee County in the State of Virginia But at the date of said Will and the Time of the Testators death the said Martha J. Coombs was a resident of Hancock County in the State of Tennessee.

But it is not true that the debt out of which said Legacy was made payable was due and owing in this County or state. G. B. Short who owed this debt, was, at the date of said Will, at the date of said Testators death, a citizen of Hancock County Tennessee, where he continued to live upto the time of his death which occurred something like a year after the death of said Overton. Said debt was owing in Tennessee. It was a debt contracted for land situated lying and being in Hancock County Tenn.

Respondent ~~admits~~ that said Short debt has now all been collected

and he will presently show how and when collected, but he denies that it was collected in the lifetime of the Legatee, the said Martha J Combs, or in the lifetime of her child the said
6 Martha Moore. Soon after Respon-
7 dent was qualified as the Executor of said last will and Testament he took legal steps to collect said Short debt which he prosecuted with all the vigor he could until the August Term 1884 of the Chancery Court of Hancock County Tenn. when he obtained a decree to sell said lands. From This decree said Shorts heirs obtained an appeal to the Supreme Court of the State of Tenn. which appeal after pending for a considerably time was finally decided in favor of your respondent by affirming the decree of the Court below. While said Appeal was still pending, to wit, on the 19th day of January 1885. your respondent had said land sold under said decree aforesaid rendered at the August Term 1884. But this sale was made subject to the said Shorts equity of redemption which ran two years from the date of said sale, expiring on the

19th day of January 1887. Respondent is advised that said debt was not collected and could not be considered as collected until said Equity of redemption had expired. And this is certainly true with regard to the appeal, certainly the debt could in no sense be considered as collected while its collection was being contested and resisted in the courts of Tenn which had jurisdiction of the subject. ~~And the appeal in this case was only finally determined in the Month of September 1886.~~ In fact said debt has not yet been collected in or reduced to money. For at the sale of said land for said debt respondent to save said debt was compelled to bid said land in. which he did for the Estate and heirs of said Testator and he so holds it yet.

It will be observed by an examination of said Will a copy of which is filed by the complainant with bill, and to which reference is here made. That the bequest to Martha J. Combs is in this language "Secondly. I give and bequeath to Martha J. Combs the daughter of Virginia A

the collection of the Short debt during the life time of the said Martha. and your respondent is advised that it did not vest according to the terms of said bequest until said Short debt was collected, and this not occurring said debt not being collected in the life time of the legatee the said Martha it never vested, but has lapsed and reverts back to the estate of the said Testator. Your orator will now show your honor that said Martha died about the 15th day of June 1886. and her child survived her some time but the exact date of its death is not shown to your respondent. The sum of about $150.00 the residue of the sum due to the said Martha from her mothers estate is now due from Respondent as Exr. of the estate of the said M B Overton and this sum he is ready to pay to any person authorized to receive it, who ever that may be and respondent is not advised who to pay it to, but he is advised that an Administrator ought to be appointed to receive it from him. No suit was necessary to collect this sum because as above stated respondent is now and

has at all times been ready to pay said sum when called on for it by one entitled to receive it.
Your respondent is advised that said Legacy of $500 or that part of it outside of or above the sum due to the said Martha from the Estate of her mother is a contingent legacy which only vested at the time of the collection of said debt. That it must be construed according to rule 2nd which makes the legatees right to receive it depend upon her being alive at the time said debt was collected. and she having died before that event happened her heirs Administrators or other legal representatives are not entitled to it, but it belongs to the estate of the Testator.
And now having answered respondent prays to be hence dismissed.

Duncan & Swell for
Defendant.

Virginia Lee County To wit
This day Peter P Fugate personally appeared before the undersigned Judge of the Lee County Court and made oath that the facts stated in

foregoing answer so far as made upon his own information are true and so far as made upon information derived from others he believes them to be true. Given under my hand this 1st day of ~~July~~ August 1887.

C. T. Duncan Judge &c.

P. P. Fry etc Ex &c
vs
Wm Answer.
N. H. Moore
Filed at Aug. Rules 1887
J. A. McAfee C.C.

$100, 00/11

Received of Peter P. Hugate Administrator of M. B. Overton dec, one hundred dollars it being a part of the money due Martha J. Combs minor heir of Virginia A. Combs dec. that was due from said Overtons estate at his death, This Jan 4th 1886

Martha Moore
N H Moore

N. H. Moore & Wife
Receipt
$100.00

"B"

To the Honorable H. SK Morison Judge of the Circuit Court of Lee County Va

The Demurrer of Peter P. Hugatt Executor &c. to a bill exhibited against him in this Honorable Court by N H Moore

Respondent says that the complainants bill is not sufficient in law to call upon him to answer in this Honorable Court, but that there is good cause of demurrer thereto and he according ly demurs, and prays Judgement of his said demurrer &c.

And for cause of demurrer he assigns the following, to wit,

1st. Said Bill makes no party defendant thereto,

2.- Because said Bill on its face shows that this Court has no Jurisdiction. The Testator lived in Tennessee, died there, his will was admitted to probate in that State, letters testamentary were granted by the Courts of that State. The Executor qualified there. and there the business of the Estate must be settled. The suit is against him as Executor and not as an individual. It is not the residence of the Executor that gives Jurisdiction but the place of his qualification

the place where the estate is situated,

3 Because Nathan H Moore has no right to sue, He is not Admr of the Estate of Martha J. Moore, formerly Coombs or of her deceased child. The Legacy existing (if at all) as the property of Martha J Moore, is a debt due her, which upon her death passed to her Admr it being personal estate and can only be collected by an Administrator

Duncan & Swell
Attys

P. P. Forgate 45-
vs 3 Duncan.
N H Moore

Filed at Aug. Term 1887
J. H. Gibbs Clerk

6 v

To the Honorable H. S. K. Morison Judge of the Circuit Court of Lee County

The separate answer of R. D. Flanary Sheriff and Admr of the estates of Martha J. Moore formerly Martha J. Combs. and of Martha Moore both deceased, to a bill exhibited against him and others in this Honorable Court by Nathan H Moore,

Respondent knows nothing of the matters in dispute in this cause. Nothing has ever come into his hands as Administrator of either of said estates nor does he know of anything which will come into his hands unless, the debt in litigation in this cause should come to him, If there is any other estate owned or claimed to belong to either of said estates he has no knowledge of the fact,

And now having answered said bill as fully as he is advised it is material or necessary for him to answer it he prays to be hence dismissed with his costs.

R. D. Flanary Admr &c

by C. T. Duncan

Atty

Sworn to, before me this 5th day of Septr. 1888 by R. D Flanary.

C. T. Duncan Judge &c

R. D. Flemory Admr

vs 3/3 Answer.

A. H. Moore

Filed Sept 6 1888

J. O. Pl. Hyatt cc

8

To the Hon. H. S. H. Morrison Judge of the Circuit Court of Lee County Virginia:

The demurrer and answer of Peter P. Fugate executor etc, to an amended and supplemental bill exhibited against him and another in this honorable Court, by Nathan H. Moore.

Respondent says, that said bill is not sufficient in law to call upon him to answer, but there is good cause for demurrer thereto, and of this he prays judgement etc. And not waiving said demurrer but relying and insisting thereon should other and further answer be required, answering says:

That it is true, that the said Complainant at the July rules 1887 filed his original bill in this honorable Court against this respondent. It is also true that this respondent was then and is now the executor in the State of Tennessee of M. B. Overton decd. It is also true, that said Overton made and published his last will and testament which was afterwards duly probated in Hancock Co. Tennessee, but whether the paper marked "A" is a true copy of said will respondent is unable to say, not having the original in his possession, and said paper "A" not being certified as records from foreign states are required to be certified; and there being no order of Court on said

paper "A" showing that the paper from which it was copied was ever admitted to probate as the last will and testament of M. B. Overton dec'd., but should it turn out that said paper "A" is a true and perfect copy of said will respondent denies that said legacy therein bequeathed to Martha J. Combs ever vested or was capable of vesting in the life time of the said Martha J. Combs or in the life time of her child the said Marina Moore. Respondent is advised that said legacy while in one sense that of being a charge upon a portion or debt i.e. the G.B. Short debt was a demonstrative legacy, yet in fact it was purely a contingent legacy dependent upon the happening of two uncertain future events; First, ~~that~~ collection of the G. B. Short debt and putting it at interest, which, must under the law, as respondent is advised happen in the lifetime of the legatee, and, secondly, that the said Martha J. Combs, leave heirs of her body, at her death.

Respondent will now show your honor, that the first of said contingencies, to wit: The collection of the G. B. Short debt, and putting it at interest did not happen in the lifetime

of the legatee, or in the lifetime of the child, ~~and~~ said legacy lapses and falls back into the residuum of his estate, to be distributed among his heirs as provided in his ~~inter~~ testator's will.

Respondent admits that Complainant intermarried with the said Moretta J. Combs, that issue was born of said marriage, that said issue survived its mother a short time when it too died. But respondent denies that said legacy ever vested in the said Moretta J. Combs, or that it was ever capable of reduction into possession in the life time of the said Moretta, said Short debt not having been collected in her life time. For which reasons he denies that it passed by descent to her child and upon the death of said child to the said Complainant.

Respondent denies that he owes this legacy himself, or that he purchased the Short land for himself. As stated in his answer to the Complainant's original bill respondent purchased said land as executor for the benefit of his testator's Estate, and he so holds it, and as to the facts and circumstances

attending the collection of said Short debt, the sale, and purchase of said land, respondent refers to his answer to the original bill which he hereby adopts so far as applicable as a part of this answer.

Respondent is advised that in the construction of wills due regard will always be paid to the intention of the testator and applying that rule to said bequest it will be seen that, if the paper filed is the true will of said Overton, his intention was to vest said legacy in the said Martha J. Combs, and the issue of her body and failing such issue to have it return to his own lawful heirs. Respondent is advised that now to vest said legacy in the complainant a stranger is to defeat said intention, and this he is advised will never be done by a court of Equity

And now having answered the complainants amended and supplemental bill, respondent prays to be hence dismissed.

Duncan V Sewell
for Defendant

Martha A. Moss
vs
Sam P. Jones
Answer

Filed Sept 6th 1888
J. A. Elizabethe

Virginia
Circuit Court of Lee County
in Vacation, Feb 13th 1889

W. R. Moor et al
vs
Peter P. Fugate &c } Demurrer

All question of the pltfs right to sue being eliminated by the consent in writing filed making the admr of Martha J. ~~Moore~~ ~~not~~ Leambs & the admr of Martha Moor deceased ~~made~~ a party pltf in this cause. Upon authority of Andrews vs Avory et als 14 Gratt 229 et seq. the demurrer is overruled to the amended bill, it appearing that Fugate has realized the money & he and the pltf and the other parties being residents of Lee County Virginia.

It is ~~drawn~~ 78 Va R 215. that this is a demonstrative legacy; but it is contended that it is dependant upon (2) conditions precedent, one of which happened, the other of which did not happen in the lifetime of the legatee.

The clause of the will is. "I give & bequeath to Martha J. Leambs, the daughter of Virginia A. Leambs five hundred dollars, out of the G. B Short debt when collected & put at interest including the amount in my hands due her from the estate of Virginia A. Leambs deceased & if the said Martha J. Leambs die leaving no heirs of her body, then said amount to go to my heirs" does this mean that the legacy is dependant upon "the collection & putting at interest of the Short debt" It is a distinguishing characteristic of a specific legacy that with the failure of subject falls the gift 1-Lee Leach J.P. 429 & 1846.

we have it contended here that a demonstrative legacy fails because the money was not collected in a specified time, thus making the legatee answerable for the delinquency of Executors Lawyers collecting officers &c & we are asked to so construe the will. Now lets see "when collected & put at interest" says the will — taken literally it is impossible — could the legacy be paid when the money was at interest? certainly not! the exact words used do not give the intention of the testator — & we are so to construe it as to give effect to each word what is that intention If the clause read I give to Martha J Learnlas $500.00 out of the G B Short debt, (when which is to be collected & put at interest) including the amount in my hands &c. & if taken as a parenthetical clause which it clearly is "when" is equivalent to "which is to be" at once" in fact I infer that the Short debt was then under process of collection. But I consider this discussion useless in as much as the answer discloses the land was sold for the debt in 1885 subject to the Equity of redemption which could in no wise defeat the debt the redemption being dependant upon the discharge of the

incumbrance, so I think we must treat the fund as collected & at interest before the death of the testator, I think also as part of the legacy was a debt due the said Martha J. why I should not infer that the testator intended to be just, & not limit the payment of just debt upon the happening of an uncertain condition: I therefore think that to treat the words "when collected & put at interest" as a condition precedent would be to do violence to the intention of the testator, & I think also that if it was his intention the condition happened before the death of Martha J Moor by the purchase of the land by the executor in 1865. subject to the equity of redemption for these reasons the following decree is denied

Nathan H Moor et als
vs
Peter P Fugate admr &c } In Eq

12

This cause came on this day pursuant to concent decree entered at term of this court to be heard upon the papers filed herein & upon the written agreement of atty filed herein on the 18th day of January 1889 & was argued by counsel

& by consent aforesaid Reese D Flanery admr of Martha J Moore & Martha J Lambs & Martha Moore is made a party plaintiff in the amended bill instead of being defendant in this cause & the court being of opinion that it is proper doth adjudge order & decree that said Reese D Flanery admr of Martha J Moore & Martha Moore sue of Peter P Hugate five hundred dollars with interest thereon from the that being the fifth of the death of Mr B Overton as per agreement in writing filed herein 15th day of July 1880 till paid subject to a credit of One hundred dollars paid the 4th day of January 1884, & the costs of this suit & execution may issue therefor & this cause is stricken from the docket

Ts the Clerk of the circuit court of Lee county Va

H. S. K. Morison
Feby 13th 1889

M H Moore adm
vs
P P Hugate & wife

Feby 13th 1889 in vacation

Entered
H. S. K. M.

1/8 45/15 48

I M.B. Overton do make and publish this as my last Will and Testament herby revoking and making void all other Wills by me at any time made. First I direct that my funral expenses and all my debts be paid as soon after my death as possible out of any moneys that I may die possessed of or may first come into the hands of my Executor Secondley I give and bequeath to Marthy J Combs the Daughter of Virginia A. Combs Dec'd Five hundred Dollars out of the G.B. Short Debt when collected and put at Intrest including the amount due her in my hands from the Estate of Virginia A. Combs Dec'd and if the above Marthy J. Combs should die leaving no heirs of her body the said amount to be divided Equally between my heirs. Thirdley I request that the remainder of my Estate after the death of my wife be Equally divided between Matilda D. Frugate & George D. Overton my Lawful heirs Lastley I do herby nominate and appoint Peter P. Frugate my Executor In witness whereof I do to this my will set my hand and seal this 17th day of November 1878 M.B. Overton (Seal)

Signed Sealed and published in our presents and we have subscribed our names hereto in presence of the Testator this 17th day of Nov 1878

Attest
Elbert Overton
Robert R. Overton

State of Tennessee }
Hancock County }

I Robert D. Greene Clerk of the County Court for the aforesaid State and County do hereby certify the within is a true perfect and full Copy of M.B. Overton Dec'd Will as appears of Record and on file in my office in Sneedville. I further certify that the Records appointing Peter P. Hugate as executor and Order of excepting said Trust has been destroyed by Fire

In testamony whereof I hereunto set my hand and Seal of office at office in Sneedville upon this the 14th day of March 1887

R. G. Greene Clerk

3

Copy

Attest

W. B. Overton

Clerk

R. H. Greenblk

fee 75

"A"

Withdrawn by Dft

This, Exhibit is objected to, because not certified as a record from a foreign court is required to be certified under the laws of Virginia to be received in evidence in this Court

Dfdt's Atty

Duncan & Sewell

Dfdt's Atty.

Said Deposition is further objected to, because there is no order showing that the will of Thos Overton was ever filed to record or proved or admitted upon written admission

Sept 5th 1888

Duncan & Sewell

For Dfdt.

State of Tennessee Hancock County,

It appears from a decree entered in the Chancery Court at Sneedville Tenn. for said County on the 9th day of March 1885 in the consolidated causes of William S. Short et al Vs Peter Fugate Executor et al and John McDowel Vs G.B. Short & others and Peter Fugate Executor &c Vs G.B. Short & others that the Clerk & Master sold the lands mentioned and described in a decree entered March 17th 1881 being the same lands M.B. Overton sold in his life time to G.B. Short by title bond, that on the 19th day of January 1885 the day of said sale Peter Fugate executor of M.B. Overton deceased became the purchaser for the benefit of the estate of Overton at the price of $25.65 the amount of the decree due said estate and the costs adjudged against said land That said sale was confirmed in said decree of March 9th 1885 and the title divested out of all the parties in the suit severally and respectively and vested in Peter Fugate as executor of the estate of M.B. Overton decd and in trust for the benefit of said estate, subject to the right of redemption, There was an appeal granted complts in the first mentioned cause and the defts in the two last named causes to the Supreme Court at Knoxville Tenn.

State of Tennessee }
Hancock County } I Henry Tyler Clerk & Master of the Chancery Court for the County & State aforesaid do certify that the foregoing statements are correct, Where lands are sold subject to redemption the laws of this State gives any time within two years after such sale to redeem. Given under my hand and seal of said Court this 10th day of August 1887

H Tyler C&M

Filed 1887 August 5

B. B. Augustus
vs
Chas. Ford
and Records
N. F. Moore

In the case of Nathan Moore against Peter P. Frugate ~~exr~~ &c. we agree that Reese D. Flanary admr of the estate of either one or both of his intestates may be by the Circuit Judge, and the same is hereby by consent, transferred from defendants, in said cause to joined as plaintiff, therein, and the cause is to be proceeded with in the manner here indicated

Jan. 17th 1889

A. L. Pridemore
Atty for plff.
C. T. Duncan of
Counsel for Dfts

Nathan E. Moore

vs Agreement

Peter P. Fugate et al

Received by me & filed July 18th 1889

Jos. H. Mariner

15

JUNE

21

FRIDAY

He who pretends to know everything proves that he knows nothing.—*Le Bailly.*

80 1 4

80 47 15

5 5 19

2

656

656

250

32800

3120

164000

After copying one of answer in full
6 (Thus say).

And at an other day, to wit:- at a circuit Court held for Lee County at the Court house thereof on the 6th day of September 1888, on motion of the Pltff, by counsel, he is allowed
7 to file his amended and Supplimental Bill, which was accordingly done

which is in letters & figures following to wit:- (Here copy amended Bill)

And on the same day on motion of the defendant, by counsel, the following answers were filed which are in letters and figures following.
8 & 9 to wit:- (Here copy answers Nos 8 & 9)

And on the same day, Sept 6 1888, the following facts were agreed and filed which are in words & figures following (Here copy
10 Agreement of facts)

And ~~at an other day, to wit: at a court held for the said County~~ on the same day, Sept 6th 1888, It was agreed that this cause be heard and passed upon in vacation.

And at an other day to wit:- on the 18th January 1889 The following agreement was filed which is in words & figures

11 as follows to wit: (Here Copy agreement No 11)

And now at this day, to wit: ~~on the~~ During vacation of the circuit court for Lee County on the 13th February 1869,

(Here Copy Decree)

12 (Commencing, This Cause Came on FC)

Memo.

Nathan H. Moore
against
Peter P. Fugate -

In this case it is agreed the copy of the will on file, properly describes the legacy to Martha J. Combs daughter of Virginia A. Combs - That Martha J. Combs intermarried with the plff Nathan H. Moore and that she had an infant child Martha Moore who survived her mother the legatee about three month and died childless and intestate, aged about 3 months - That the plff & defendant both live in Lee County Va and defendant Peter P. Fugate was and is executor of the last will and testament of M. B. Overton in the State of Tenn -

That the G. B. Short debt was in litigation during the lifetime of Martha J. Moore & while she was the wife of the plff, and during the

lifetime of said infant but that it has been collected by said executor since its death, - The question under this state of facts is, Is the pltff as heir of the infant the issue of the marriage with the legatee entitled to recover the said legacy payable out of the short debt or other proceeds? And it is further agreed that Peter P. Fregates answer to the original bill states correctly the course of litigation and mode of payment of said debt. It is further admitted that the sum of $150.00, as of the date of said will, 17th Nov. 1878 being the property in the testator's name, due to Martha J. Combs and that sum is a part of said legacy & should be paid to the party entitled. Subject to a credit of $100 - paid Jan 4 1886.

A. L. Predemore
Atty for pltff.

Duncan & Swell
for Defts.

Agreement of Facts

Filed Sept 6 1888
J. Phillips Clerk

10

A

Nathan H. Moore
v
Peter Frugate

In line two beginning with "but he denies that it was (the short debt) collected in the lifetime of the Legatee the said Martha J. ~~Moore~~ Coombs or in the lifetime of her child the said Martha Moore" in defendants answer is excepted to because it sets up no legal defense - It does not matter when it was collected so as before suit brought. And line 6 to 21 inclusive on same page 3. is excepted to as immaterial and irrelevant and not setting up any defense.
And from line 21 on page 3 to line 21 on page 4 is excepted for the reasons above.
From line 2 from foot of page 5 to and including line 16 on page 6 is excepted to as not setting up any legal defense. This legacy does not depend upon an contingency but is a vested right at the date of the will & passes in course of descent. It is vested upon the happening of the event & relates back.

line four on page 7 and down to and inclusive of line 16 of that page is excepted to as not setting up any legal defense - the statements there made not being the law applicable to this case.

This is a Demonstrative Legacy, reduced to a certainty, upon the happening of an event - If Martha J. Lemley died leaving issue the legacy vested - She did die leaving an infant child surviving her the issue of her marriage with the pltff - This infant then had this legacy as so much personal estate due her & her guardian could have collected it - If so upon its death its personal estate vested in its father the pltff - and so should now be paid to him.

A. L. Pridemore

Atty Brief

Peter P. Dugate Ex etc

vs } Brief.

Nathan H. Moore.

12

To Hon. A. L. Pridemore Atty
for Nathan. H. Moore in the Chancery
cause lately decided in the Circuit Court
of Lee County Virginia in which the said
Nathan H. Moore et als are Plaintiffs and
P. P. Fugate Executor &c is defendant.

You are hereby notified, that
I intend to apply to the Clerk of the
Circuit Court of Lee County for a
transcript of the record, in the above
named case for the purpose of presenting
said transcript to the Honorable the
Judges of the Supreme Court of Appeals
of Virginia for the purpose of obtaining
a supersedeas to the decree entered in
said cause on the 13th day of February
1889 by the Hon H. S. K. Morison Judge
of the Circuit Court of Lee County Va.

Very truly yours
April 9th 1889. P. P. Fugate Executor &c
by. Counsel
Duncan & Smith Attys

P. P. Tingate Exr, etc

Ads } Notice

Nathan H. Moore Defdt

I accept legal service of this notice April 9 1884

N. L. Pridemore
Atty for Plff.

To Hon. A. L. Pridemore atty
For Nathan H Moore in the Chancery
cause lately decided in the Circuit
Court of Lee County Virginia in
which the said Nathan H Moore et al
are Plaintiffs and P. P. Fugate executor
&c is Defendant.

You are hereby notified that
I intend to apply to the Clerk of the
Circuit Court of Lee County for
a transcript of the record, in the
above named case for the purpose
of presenting said transcript
to the Honorable the Judges of the
Supreme Court of Appeals of
Virginia, for the purpose of
obtaining a supersedeas to the
decree entered in said cause
on the 13th day of February 1889
by the Hon. H. S. K. Morison Judge
of the Circuit Court of Lee
County Va.

April 9th 1889.

Very truly yours
P. P. Fugate Executor
by Counsel
Duncan & Sewell attys

For A. L. Pridmore

The Commonwealth of Virginia,

To the Sheriff of LEE COUNTY—Greeting:

WE COMMAND YOU to summon Peter Fugate

to appear at the Clerk's office of the Circuit Court of Lee County, at the Court House on the first Monday in July *next, being Rule Day, to answer a Bill in Chancery exhibited in our Court against* him *, by*

Nathan D. Moore

And have then and there this Writ. Witness, J. A. G. HYATT, Clerk of our said Court, at the Court House, this 21st *day of* June *1887 in the* 111 *year of the Commonwealth.*

J. A. G. Hyatt *Clerk.*

A Copy Teste:

(D)

15

Nathan H. Moore

vs } Spa in Chy

Peter Fingate

To July Rules 1887

Executed by delivering a true office copy of the within to P P Fingate Sunset 28 1887

S H Ewing D.S.

for R D Flanery

S L C